

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12	ALY TAMBOURA,)	No. C 08-1143 JF (PR)
13	Petitioner,)	
14	vs.)	ORDER TO SHOW CAUSE;
15	ROBERT L. AYERS, Warden)	DENYING MOTION FOR
16	Respondent.)	APPOINTMENT OF COUNSEL
)	AND APPLICATION FOR
)	LEAVE TO PROCEED IN
)	FORMA PAUPERIS
)	(Docket Nos. 2 & 3)

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. As Petitioner has paid the filing fee, his application to proceed in forma pauperis (docket no. 2) is DENIED as moot. The Court orders Respondent to show cause why the petition should not be granted and DENIES the application for appointment of counsel (docket no. 3).

BACKGROUND

Petitioner plead no contest, in Monterey County Superior Court, to counts of inflicting corporal injury on a spouse, making criminal threats, and the use of a firearm. On July 29, 2004, the trial court sentenced Petitioner to a term of fourteen years in state prison. The trial court stayed the sentence and placed Petitioner on probation for three years. On December 16, 2005, the trial court held a hearing and found Petitioner had

1 violated probation. On February 2, 2006, the trial court sentenced Petitioner to a term of
2 fourteen years in state prison. The California Court of Appeal affirmed, and the
3 California Supreme Court denied the petition for review. The instant federal habeas
4 petition was filed on February 28, 2008.

5 DISCUSSION

6 A. Standard of Review

7 A district court may entertain a petition for writ of habeas corpus “in behalf of a
8 person in custody pursuant to the judgment of a State court only on the ground that he is
9 in custody in violation of the Constitution or laws or treaties of the United States.” 28
10 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

11 A district court shall “award the writ or issue an order directing the respondent to
12 show cause why the writ should not be granted, unless it appears from the application that
13 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

14 B. Petitioner’s Claims

15 Petitioner alleges the following claims for habeas relief: (1) there was not
16 sufficient evidence to support the finding that Petitioner violated the terms of his
17 probation by willfully failing to pay child support, in violation of his right to due process;
18 (2) there was not sufficient evidence to support the finding that Petitioner violated his
19 probation by willfully failing to stay more than 100 yards away from his ex-wife, in
20 violation of his right to due process; (3) his probation violation hearing was not held
21 before a neutral arbiter, in violation of his right to due process; and (4) Petitioner did not
22 receive notice of the violation of probation, in violation of this right to due process.
23 Liberally construed, Petitioner’s claims are sufficient to require a response. The Court
24 orders Respondent to show cause why the petition should not be granted.

25 CONCLUSION

26 1. The Clerk shall serve by mail a copy of this order and the petition and all
27 attachments thereto upon Respondent and Respondent’s attorney, the Attorney General of
28 the State of California. The Clerk shall also serve a copy of this order on the Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state criminal proceedings that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving a copy on Respondent within **thirty days** of the date the answer is filed.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the court and serve on Respondent an opposition or statement of non-opposition within **thirty days** of the date the motion is filed, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen days** of the date any opposition is filed.

4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court and all parties informed of any change of address by filing a separate paper captioned "Notice of Change of Address." Petitioner must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

5. Petitioner's motion for appointment of counsel is DENIED for want of exceptional circumstances, and because no evidentiary hearing is necessary at this time. The application for leave to proceed in forma pauperis is DENIED as moot because Petitioner has paid the filing fee.

IT IS SO ORDERED.

DATED: 5/2/08


JEREMY FOGEL
United States District Judge